WILLIAM B. WALKER, M.D.
HEALTH SERVICES DIRECTOR
RANDALL L. SAWYER
INTERIM ENVIRONMENTAL HEALTH DIRECTOR



CONTRA COSTA ENVIRONMENTAL HEALTH

2120 Diamond Blvd., Suite 200 Concord, California 94520 Ph (925) 692-2500 Fax (925) 692-2502 www.cocoeh.org

CERTIFIED MAIL

December 16, 2010

Larry Sweetser Sweetser & Associates, Inc. 2115 Rheem Avenue Richmond, CA 94801

RE: Enforcement Agency (EA) Notifications: Inert Debris Type A and Revised Green Material Woodmill Recycling Company, 5595 Byron Hot Springs Road, Byron, APN 002-210-020, SWIS# 07-AA-0062

Dear Mr. Sweetser:

On November 12, 2010, Contra Costa Environmental Health (CCEH) received two Enforcement Agency (EA) Notification requests from Woodmill Recycling Company (WRC). One is for an Inert Debris Type A Processing Operation and the other is a revision of the current EA Notification allowing a Small Volume Chipping & Grinding Operation.

The following comments incorporate the overall assessment of the operation and maintenance of this facility, including compliance history relative to the State Minimum Compliance Standards contained in the California Code of Regulations (CCR), Title 14, the Public Resources Code (PRC), and Contra Costa County Ordinance. (Also see also CalRecycle's LEA Advisory #39, copy attached).

The land use permit application (County File#LP072008) submitted by WRC on February 17, 2007, requested the approval to establish a recycling facility for concrete, asphalt, and green waste. According the Contra Costa County Department of Conservation and Development, WRC has not demonstrated that the terms and conditions of the land use permit (LUP) have been met.

The current approved EA Notification specified operation of a Small Volume Chipping and Grinding facility. Pursuant to this EA Notification, the facility may only accept green waste, wood waste, and construction wood waste; however the facility has been receiving unapproved materials (i.e., concrete, asphalt, tile, brick, etc), and has been not been meeting Minimum State Compliance Standards. The land use permit restricts the operation to the front $2\frac{1}{2}$ acres of the property, while the EA Notification is limited a maximum of 3 acres. WRC currently operates on 7.0 + acres of the 10.0 acre parcel. To comply with both the LUP and the current EA Notification, operations at this site are limited to the front $2\frac{1}{2}$ acres.

CCEH has conducted inspections of the business since March 24, 2008. The facility has not been able to meet the Minimum State Compliance Standards and has been notified of this fact via inspection reports (quarterly from March 24, 2008 through December 29, 2009; and monthly from February 23, 2010 to date), a violation letter dated November 17, 2009, and meetings held on September 23, 2009, December 21, 2009, March 10, 2009, and September 23, 2010. In order to operate under two EA Notifications (as requested by the forms



- Contra Costa Hazardous Materials Programs Contra Costa Mental Health Contra Costa Public Health Contra Costa Regional Medical Center Contra Costa Health Centers •

submitted to CCEH) at this site, the operator will need to demonstrate that each operation is separate, distinct, and meets the State Minimum Standards.

During inspections, the facility has been observed to have one access road for ingress and egress, a single entrance gate, a single scale house and attendant. There is one employee that works in the storage and processing areas. The storage and processing areas for both inert debris (concrete, tile, asphalt, etc.) and green material and green waste (including but not limited to drying and processed palm, leaves, clippings), wood waste and construction wood waste, sod, and processed green material are all located on one contiguous parcel. (See current map of facility operations attached.) A single set of operating and training records are maintained. Heavy equipment (e.g., bulldozer) is used throughout the 7.0+ acre parcel.

Based on the information submitted, CCEH cannot make a determination that these are separate and distinct operations meeting the State Minimum Standards. Please submit to CCEH sufficient details, including a plot map, demonstrating that the proposed EA Notification operations are separate, distinct, and meet the state minimum standards, CCEH is the lead agency to determine whether or not the submitted EA Notifications will meet the minimum requirements, however, this does not preclude any other requirements of the Contra Costa County Department of Conservation and Development (DCD that may apply during WRC's process to obtain a current Land Use permit and the CEQA process. Consideration as to whether or not WRC can meet the qualifications of an EA Notification include, reviewing the compliance history of this site.

Additionally, the previously discussed Cease & Desist Order and Compliance Schedule are attached regarding the status of the current EA Notification for a Small Volume Chipping & Grind Operation for WRC.

If you have any questions, please contact me at 925-692-2569.

Sincerely,

Agnes T. Vinluan, REHS

Environmental Health Specialist II

Solid Waste Program

cc:

Randy Sawyer, Director of Environmental Health
Richard Lee, Assistant Director of Environmental Health
Joe Doser, Supervising Environmental Health Specialist
Steve Bolen, Deputy District Attorney
Tomi Van de Brooke, Chief of Staff, Supervisor Piepho's Office
Aruna Bhat, Department of Conservation & Development
Francisco Avila, Senior Planner DCD
Steve Aubert, Contra Costa Fire Protection Department
Patty Cookson, Building Inspection Department
John Milochik, Woodmill Recycling Company

2 3 5 6 7 8 BEFORE THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD 9 10 AS ENFORCEMENT AGENCY FOR CONTRA COSTA COUNTY 11 DECLARATION OF 12 In the Matter of: AGNES T. VINLUAN 13 THE OPERATION OF WOODMILL RECYCLING RE: NOTICE AND ORDER TO COMPANY, FACILITY NO. 07-AA-0062, 14 CEASE AND DESIST & CLEAN LOCATED AT 5595 BYRON HOT SPRINGS UP AND ABATEMENT NO. ROAD, BYRON, CA; ASSESSOR'S PARCEL 15 EA-2010-01 NUMBER: 002-210-020 IN VIOLATION OF 16 PUBLIC RESOURCES CODE, SECTIONS 44002, 44004, 45000, 45010.0, 45005, 45011 AND 45023; 17 CALIFORNIA CODE OF REGULATIONS, TITLE 14, SECTIONS 18304, 18304.1 AND 18304.3. 18 19 DECLARATION IN SUPPORT OF NOTICE AND ORDER 20 21 I, Agnes T. Vinluan, declare as follows: 22 1. I am currently employed as a Senior Environmental Health Specialist by Contra Costa 23 Environmental Health (CCEH), a position I have held for thirteen years. Pursuant to 24 the Public Resources Code (PRC), Section 43200 and the California Code of 25 Regulations (CCR), Title 14, Section 18304, CCEH is the local enforcement agency

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(LEA) for Contra Costa County. My duties with CCEH include inspecting solid

waste facilities and disposal sites in Contra Costa County to determine their

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- compliance with the Integrated Waste Management Act, known also as "The Act" (PRC Section 40000 et seq.), CCR, Title 14, Sections 18304, 18304.1 and 18304.3.I
- 2. I have personal knowledge that Woodmill Recycling Company (WRC) described in the Notice and Order No. EA-2010-01 is in violation of the Act and CCR, Title 14, specifically, Section 17383.3, not operating as a SMALL VOLUME Construction & Demolition Wood Debris CHIPPING AND GRINDING Operation pursuant to the EA Notification received by CCEH on February 14, 2008 and received by CalRecycle on February 21, 2008. As a Small Volume C & D Wood Debris Chipping and Grinding facility, the operation is to accept no more than 120 cubic yards per day of "greenwaste, wood waste, and construction wood waste"; and to operate on 3.0 acres.
- 3. I have personal knowledge that on June 3, 2009, during an inspection at WRC with Laura Sullivan, CalRecycle staff, that the facility is in violation of PRC 44002, for accepting concrete, asphalt, brick, tile, and other inert debris not indicated on the current EA Notification. Additional inspection reports citing PRC 44002 were on December 29, 2009; January 28, 2010; June 28, 2010; July 22 2010; August 25, 2010; and September 15, 2010.
- 4. I have personal knowledge that on October 12, 2010, Tim Kraus, Senior Environmental Health Specialist, CCEH conducted an inspection in response to a fire that occurred at the facility. Mr. Kraus noted that the operator of the facility was still conducting activities that require a solid waste facilities permit, such as receiving accepting and handling or processing concrete, brick, tile, asphalt, and other inert debris; receiving and accepting compostable material; and operating a compostable material handling facility in violation of PRC 44002.
- 5. I have personal knowledge that CCEH issued a violation letter to WRC dated November 17, 2009 regarding PRC 44002 as described under Item#3.
- 6. I have personal knowledge that CCEH met with WRC and discussed the facility's

operation in violation of PRC 44002 (as described under Item# 3) in meetings with the owner/operator, Mr. John Milochik on September 23, 2009; December 21, 2009; and March 10, 2009.

- 7. I have personal knowledge that on May 25, 2010, facility records indicate that compostable material was not removed from WRC for 27 days; January 28, 2010 facility records indicated that compostable material was not removed from WRC for 14 days due to "rainy weather:; CCEH also recorded temperatures of compostable materials at or above 122 degrees Fahrenheit. Both the storage time and recorded temperatures (indicated in inspection dates below) are in violation of PRC 44002. CCEH has recorded at or above 122 degrees Fahrenheit on the following dates of inspection:
 - December 29, 2009: 123-130 degrees Fahrenheit
 - January 28, 2010: 128-138 degrees Fahrenheit
 - February 23, 2010: 125-150 degrees Fahrenheit
 - April 2, 2010: 150 degrees Fahrenheit
 - May 25, 2010: 123-140 degrees Fahrenheit
 - June 28, 2010: 137-139 degrees Fahrenheit
 - July 22, 2010: 160 degrees Fahrenheit
 - August 25, 2010: 138 degrees Fahrenheit
 - September 23, 2010: 150 degrees Fahrenheit
 - October 12, 2010: Focused inspection conducted due to fire incident.
- 8. I have personal knowledge that WRC is in violation of CCR, Title 14, Section 17383.3(f), providing adequate fire prevention, protection and control measures, including, but not limited to, temperature monitoring, adequate water supply for fire suppression, and the isolation of potential ignition sources from combustible materials as cited in inspection reports dated April 2, 2010; May 25, 2010; and October 12, 2010.

9. I have personal knowledge that WRC is in violation of PRC 44004, currently operating on 7.0 acres of a 10.0 acre contiguous parcel, parcel number 002-210-020, making a significant change in the operation without approval from the LEA and/or CalRecycle as cited in inspection reports dated: July 22, 2010; August 25, 2010; and October 12, 2010.

- 10. I have personal knowledge that on September 23, 2010, CCEH held an Administrative meeting with owner/operator, Mr. John Molochik and other regulatory agencies to discuss violations of the facility regarding PRC 44002 and 44004; CCR, Title 14, Sections 17383.3, 17383.3(f) and 17383.3(b)(3); and that if these violations were not corrected, that a Cease and Desist Order would be issued.
- 11. I have personal knowledge that all of the inspection reports and correspondences mentioned in this Notice and Order, EA-2010-01 were sent to the owner/operator of WRC, Mr. John Milochik via certified mail.
- 12. The specific conditions I observed at WRC which constitute violations and the corresponding statutory, regulatory, or permit requirements are specified in the inspection reports and the Notice and Order issued herewith.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 12.16.10

Agres T. Vinluan, REHS

Senior/Environmental Health Specialist

Solid Waste Program

Contra Costa Environmental Health 2120 Diamond Blvd., Suite 200 Concord, CA 94520

WRC.Declaration, 12.14,10

WHEREAS, the owner and operator of WRC, an unpermitted solid waste facility is in violation of Title 14 CCR, Section 17383.3 as the facility is not operating as a SMALL VOLUME C & D Wood Debris CHIPPING AND GRINDING Operation pursuant to the EA Notification received by Contra Costa Environmental Health (CCEH) on February 14, 2008 and received by CalRecycle on February 21, 2008. As a Small Volume C & D Wood Debris Chipping and Grinding facility, the operation is to accept no more than 120 cubic yards per day of "greenwaste, wood waste, and construction wood waste"; and operate between the hours in the winter of 8:00 am – 5:00 pm (Monday through Friday), Saturdays between 9:00 am – 3:00 pm; and in the summer from 6:00 am to 6:00 pm (Monday through Friday), Saturdays between; within 3.0 acres; and

WHEREAS, on June 3, 2009 during an inspection at WRC with Laura Sullivan, CalRecycle staff, it was documented in the inspection report that the operation conducted by WRC was in violation of PRC 44002 for accepting concrete and other construction items not indicated in the Small Volume C & D Wood Debris Chipping and Grinding EA Notification. The owner/operator was instructed in writing on this date by the LEA in their inspection report dated June 3, 2009 to "Immediately discontinue accepting any material that has not originally been included in the EA Notification". In additional inspection reports, the LEA cited PRC 44002 on December 29, 2009; January 28, 2010; June 28, 2010; July 22, 2010; August 25, 2010; September 15, 2010; and

WHEREAS, CCEH conducted an inspection due to a fire at WRC on October 12, 2010. During the inspection the LEA again noted that the operator was conducting activities that required a solid waste facilities permit, such as receiving, accepting and handling or processing concrete, brick, tile, asphalt, and other inert debris; receiving and accepting compostable material; operating a compostable material handling facility, and is in violation of PRC 44002 as documented in the LEA's inspection report; and

WHEREAS, CCEH recorded at or above 122 degrees Fahrenheit and being observed storing compostable material at the site for more than 48 hours. Both activities are not included in the Small Volume C & D Wood Debris Chipping and Grinding EA Notification and require

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authorization through the issuance of a solid waste facilities permit and if not corrected, a Cease and Desist Order would be issued; and

WHEREAS, the LEA informed Mr. Milochik that WRC is in violation of Title 14, CCR, Section 17383.3(b)(3): Receiving and accepting compostable material in the form of green material that was found to exceed 122 degrees Fahrenheit. Green material on-site was measured with a compost thermometer and found to be compostable materials, cited in inspection reports for inspections conducted on these dates with corresponding observed green material temperatures:

- December 29, 2009: 123-130 degrees Fahrenheit
- January 28, 2010: 128-138 degrees Fahrenheit
- February 23, 2010: 125-150 degrees Fahrenheit
- April 2, 2010: 150 degrees Fahrenheit
- May 25, 2010: 123-140 degrees Fahrenheit
- June 28, 2010: 137-139 degrees Fahrenheit
- July 22, 2010: 160 degrees Fahrenheit
- August 25, 2010: 138 degrees Fahrenheit
- September 23, 2010: 150 degrees Fahrenheit
- October 12, 2010: Focused inspection conducted after a reported fire, as evidence of violations of Title 14 CCR, Section 17383.3(b)(3); and

WHEREAS, the LEA informed Mr. Milochik that WRC is in violation of Title 14, CCR, Section 17383.3(f): as cited in inspection reports dated April 2, 2010; May 25, 2010; October 12, 2010; and

WHEREAS, the LEA notified MR. JOHN MILOCHIK, owner and operator of WRC that he is in violation of PRC 44004: Making a significant change in the operation without approval from the LEA and CalRecycle, as cited in inspection reports dated September 29, 2009; July 22, 2010; August 25, 2010; September 25, 2010; October 12, 2010 and discussed during the Administrative meeting on September 23, 2010 and that the solid waste handling and

compostable material handling activities are occurring on 7.0 acres, 4.0 acres beyond that which was included in the Small Volume C & D Wood Debris EA Notification – determined using a measuring wheel. This is documented in inspection reports conducted on June 28, 2010, July 22, 2010, August 25, 2010, September 15, 2010 and October 12, 2010. This section was also discussed at the Administrative meeting held by CCEH on September 23, 2010; and

WHEREAS, WRC approved the EA Notification to operate A Small Volume C&D Chipping and Grinding operation with allows the facility to operate within 3.0 acres. The facility currently operates on 7.0 + acres of a 10.0 acre contiguous parcel located at 5595 Byron Highway, Byron California, assessor's parcel # 002-210-020. Within the 7+ acres, the CCEH observed that this facility has one access road for ingress and egress, a main gate, a scale house and an attendant, a portable toilet for employee use. There is one employee that works in the storage and processing areas. Storage and processing areas of inert debris (concrete, tile, asphalt, etc) and green material and green waste (including but not limited to drying and processed palm, leaves, clippings), wood waste, and construction wood waste, sod, and processed green material are all located on one contiguous parcel. Operating records that have been reviewed during inspections have been reviewed at the scale house. Training of employees for health and safety, operations and maintenance of facility are recorded and kept in a binder for review. Heavy equipment, such as the bulldozer, have been observed to be used throughout the 7.0+ acre parcel; and

WHEREAS, at the request of Contra Costa Environmental Health, LEA staff met with Mr. John Milochik, owner and operator of WRC on September 23, 2010 (Administrative meeting) to clarify the applicable requirements and to determine what actions, if any, that the owner or operator may voluntarily take to bring the Facility/Site into compliance by the earliest feasible date, pursuant to PRC section 45010.2.

THEREFORE, PURSUANT TO PRC SECTIONS 44002, 45000, 45005, 45011, AND MR. JOHN MILOCHIK, OWNER AND OPERATOR OF WOODMILL RECYCLING COMPANY IS ORDERED TO:

- 1. Immediately cease and desist all activities for which a solid waste facilities permit is required and that WRC has not been approved for. These activities include, but are not limited to: (a) receiving, handling or processing of all materials other than "green waste, wood waste, and construction wood waste"; and (b) operating a compostable material handling facility (Compliance requires maintaining temperatures of green material below 122 degrees Fahrenheit AND storing the material for less than 48 hours on-site.)
- 2. Immediately operate consistent with the requirements of a Small Volume C & D Wood Debris Chip and Grind Operation pursuant to 14 CCR, Section 17383.3.
- 3. Within 3 months, remove ALL inert debris from the facility. The clean up and removal schedule (schedule) is that at least 770 cubic yards of inert debris must be removed weekly. Disposal receipts must be provided weekly to CCEH for review until all inert debris has been removed, and must be available on-site.
- 4. Within 3 months remove ALL green waste/material and compostable material stored on-site for greater than 48 hours from the facility. This facility is also still required to remove at minimum, 200 tons per day of green waste as required in 14 CCR, Section 17383.3. Disposal receipts for green waste must be provided weekly to CCEH for review until all green waste stored greater than 48 hours on-site has been removed, and must be available on-site.
- 5. As owner/operator of WRC, submit a clean up and removal schedule ON OR BEFORE JANUARY 1, 2011 which provides specific amounts of inert debris and compostable material, removal frequency, etc. IF THE OWNER/OPERATOR OF WRC, MR. JOHN MILOCHIK DOES NOT PROVIDE A WRITTEN CLEAN UP AND REMOVAL SCHEDULE BY JANUARY 1, 2011, THE OWNER/OPERATOR OF WRC WILL BE RESPONSIBLE FOR ADHERING TO THE SCHEDULE STATED UNDER ITEMS #3 AND #4 OF THIS ORDER, OR WILL BE SUBJECT TO PENALTIES AND FURTHER ADMINISTRATIVE ACTION.

6. Disposal receipts for inert debris and compostable material must be submitted weekly to: Agnes Vinluan, Senior Environmental Health Specialist, Contra Costa Environmental Health, 2120 Diamond Boulevard, Suite 200, Concord, California 94520, or the owner/operator will be subject to penalties or further administrative action.

THEREFORE, PLEASE TAKE NOTICE THAT PURSUANT TO PRC SECTIONS 45010.1, 45011, 45014, AND 45023, if the above actions are not completed or complied with by the specified dates, The LEA may pursue further administrative and legal action.

- 1. Impose administrative civil penalties in an amount not to exceed \$5,000 for each violation, for each day the violation continues. [PRC §45010.1]
- Impose administrative civil penalties in an amount not to exceed \$5,000 per day for each
 day the Facility/Site fails to achieve compliance with the time frames specified above.

 [PRC §45011]
- 3. Petition the superior court for injunctive relief to enforce this Notice and Order. [PRC §45014].
- 4. Petition the superior court for civil penalties in an amount not to exceed \$10,000 per day for each violation. [PRC §§45023 and 45024]

Failure to remedy the aforementioned violation(s) by the required date(s) may result in the LEA and/or CalRecycle expending available funds to perform any cleanup, abatement, or remedial work required under the circumstances set forth in PRC §45000 which, in the judgement of the LEA and/or CalRecycle, is required by the magnitude of endeavor or the need for prompt action to protect public health and safety or the environment. If the LEA and/or CalRecycle expends funds to perform any cleanup, abatement, or remedial work, the LEA and/or CalRecycle may seek cost reimbursement from responsible parties, pursuant to PRC §48020 et seq.

Failure to allow or provide the LEA/ CalRecycle or its contractor with access to enter onto the property and perform all necessary cleanup, abatement, or remedial work may result in

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the LEA/CalRecycle pursuing a warrant from the court to permit reasonable access to the property to perform the activity(ies), pursuant to PRC §44100.

Nothing in this Notice and Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations. Notwithstanding compliance with the terms of this Notice and Order, the owner and operator may be required to take further actions as necessary to protect the public health, safety, or the environment.

The LEA and/or CalRecycle shall not be liable for injuries or damages to persons or property resulting from acts or omissions by the owner or operator or related parties in carrying out activities pursuant to this Notice and Order, nor shall the LEA and/or CalRecycle be held as a party to any contract entered into by the owner or operator or their agent(s) in carrying out activities pursuant to this Notice and Order.

This Notice and Order is supported by the accompanying declaration of Agnes Vinluan, Senior Environmental Health Specialist. This Notice and Order does not relieve the owner or operator from complying with all other local, state, and federal requirements, nor does it preclude the LEA and/or CalRecycle from taking any and all other actions allowed by law.

This Notice and Order may only be amended in writing by an appropriate representative of the EA.

PLEASE TAKE NOTICE THAT:

- 1. You have the right to appeal this Notice and Order to the Hearing Panel. [PRC §44307]
- 2. If you wish to appeal this Notice and Order to the Hearing Panel, you must do so by submitting a written request for a hearing to the undersigned, together with a statement of issues on which your appeal is based, within 15 days from the date you receive this Notice and Order. [PRC §44310]
- 3. An appeal of this Notice and Order does not stay the effect of any provision of this Notice and Order; however, you may petition the Director, in writing, to stay the

effect of this Notice and Order, or portion thereof, pending the completion of your administrative appeals. [PRC §45017]

This Notice and Order is issued as of the date set forth below.

Dated: ______

Randall L. Sawyer, Director of Environmental Health Contra Costa Environmental Health Services

Acting as the Enforcement Agency for Contra Costa County

Contra Costa Environmental Health 2120 Diamond Boulevard, Suite 200 Concord, CA 94520

Cease&desist.woodmill,12.6.10